

Application No. 09/664,827
Amendment Dated May 18, 2004
Reply to Final Rejection of February 23, 2004

REMARKS/ARGUMENTS

By this Amendment, claims 2, 11 and 52 are canceled, and claims 1, 20-24 and 34-35 are amended. Claims 26-49 have been withdrawn from consideration pursuant to a restriction requirement. Claims 1, 3-10 and 12-51 are pending.

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Entry of this Amendment is proper under 37 C.F.R. §1.116 because the Amendment: (a) places the application into condition for allowance (for reasons discussed herein), (b) does not raise any new issues requiring further search and/or consideration (because the Amendment is directed to subject matter previously considered during prosecution), (c) does not present any additional claims without canceling a corresponding number of finally rejected claims, and (d) places the application into better form for appeal, should an appeal be necessary. The Amendment was not previously made because the form of the Amendment was not determined until issuance of the Final Rejection. Applicants respectfully request entry of the Amendment.

Applicants gratefully acknowledge the statement at page 4 of the Final Rejection that claims 5, 10-12, 15-18, 20-25 and 50-51 are free of the prior art. Accordingly, claim 1 is amended to incorporate the limitations of claim 11 to place claim 1 and all the claims ultimately dependent therefrom in allowable form (claim 1 also incorporates the limitations of claim 2, which are intended to distinguish the claimed complex from any pre-existing products of nature). In addition, claims 20, 23 and 24 are amended to independent form including all the limitations of claim 1 as previously presented, from which each of the claims directly depended. Claims

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21-22 and 34-35 are amended for improved antecedent basis in the claims from which they depend. Thus, all of the composition claims are now in allowable form. Accordingly, reconsideration and withdrawal of the rejection of claims 1-4, 7-9, 13-14 and 19 as allegedly being anticipated by McGavin et al. are respectfully requested.

In view of the allowability of the product claims, Applicants respectfully request rejoinder and allowance of withdrawn process claims 26-49 pursuant to MPEP 821.04, which provides in pertinent part:

Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. See MPEP § 806.05(f) and § 806.05(h). The claims to the nonelected invention will be withdrawn from further consideration under 37 CFR 1.142. See MPEP § 809.02(c) and § 821 through § 821.03. However, *if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.* [Emphasis added.]

Process claims 26-49 ultimately depend from product claim 1, which is allowable for the reasons noted above.

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

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Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOV, LTD.

May 18, 2004

Please charge or credit our Account
No. 03-0075 as necessary to effect
entry and/or ensure consideration of
this submission.

By 

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